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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,242	08/01/2003	William E. Stafford	BP2525	2452

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EXAMINER	
SWEARINGEN, JEFFREY R	
ART UNIT	PAPER NUMBER
2145	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/633,242	STAFFORD ET AL.	
	Examiner	Art Unit	
	Jeffrey R. Swearingen	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/15/2008 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant's invention is not being adequately claimed. Applicant's invention broadcasts TCP response replies on an alternate wireless channel to avoid congestion. Applicant's claims read on a wireless VPN tunnel. Additionally, Applicant's claims do not require that the second "channel" operates on a different frequency, as channels can be read to encompass a data channel over the Internet encompassing a particular type of data, media, or entertainment information e.g. channels on YouTube.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 7-12, 14-17, 19-22, 24-26, 28-31, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Bendinelli et al. (US 6,631,416).

6. In regard to claim 1, 8, 24, 29, Bendinelli disclosed:

receiving a scan channel request of a plurality of channels that are in accordance with the network interface protocol; Column 16, lines 4-25 teach the use of communication channels. Column 16, lines 63-64 show this includes a wireless network. Wireless channels are inherently scanned in order to be detected.

determining whether an Internet packet is being received via one of the plurality of channels when the channel scan request is received; column 17, lines 21-36

when the Internet packet is being received when the channel scan request is received, scanning at least one other channel of the plurality of channels, but less than all of the plurality of channels; column 17, lines 21-36; column 20, lines 10-13

after scanning the at least one other channel, tuning to the one of the plurality of channels and transmitting at least one outbound Internet packet; and column 17, lines 21-36; column 20, lines 43-47

scanning at least another channel of the plurality of channels. Column 20, lines 10-13.

7. In regard to claim 2, 9, Bendinelli disclosed:

periodically receiving the channel scan request from a host device to determine whether another one of the plurality of channels contains data of interest to the host device. Column 20, line 46 supports IP connection sharing.

8. In regard to claim 3, 25, Bendinelli disclosed:

determining that a source of the Internet packet and a destination of the Internet packet have established a Transmission Control Protocol (TCP) connection. Column 23, lines 13-29

9. In regard to claim 4, 10, Bendinelli disclosed:

the Internet packet is formatted in accordance with an Internet Protocol (IP), such that the Internet interface protocol is in accordance with a TCP/IP protocol. Column 23, lines 13-29

10. In regard to claim 5, 17, 26, Bendinelli disclosed:

determining whether each of the plurality of channels have been scanned; column 17, lines 21-36; column 20, lines 10-13

when each of the plurality of channels have not been scanned, tuning to the one of the plurality of channels to transmit at least one further Internet packet; and column 17, lines 21-36; column 20, lines 43-47

continuing between scanning channels of the plurality of channels and tuning to the one of the plurality of channels until each of the plurality of channels has been scanned. Column 20, lines 10-13

11. In regard to claim 7, 28, Bendinelli disclosed:

receiving at least one additional Internet packet. Column 20 lines 10-13 monitor the performance of a tunnel. Performance ongoing would require additional packets to be transmitted. Further supported by network address translation in column 20, lines 43-45.

12. In regard to claim 11, 21, 30, Bendinelli disclosed:

iteratively hopping between scanning one of the other channels and the channel supporting the TCP connection until each of the other channels has been scanned, wherein, during a time when tuned to the channel supporting the TCP connection, at least one datagram is transmitted. Column 20 lines 10-13 monitor the performance of a tunnel. Performance ongoing would require additional packets to be transmitted. Further supported by network address translation in column 20, lines 43-45.

13. In regard to claim 12, 19, 22, 31, Bendinelli disclosed:

during the time when tuned to the channel supporting the TCP connection, receiving at least one new datagram. Column 20 lines 10-13 monitor the performance of a tunnel. Performance ongoing would require additional datagrams to be transmitted. Further supported by network address translation in column 20, lines 43-45.

14. In regard to claim 14, Bendinelli disclosed:

wireless network interface module to provide connectivity to a wireless local area network (WLAN) in accordance with at least one wireless network interface protocol, wherein the WLAN is coupled to an Internet, and wherein the connectivity is provided via one of a plurality of channels of the WLAN; Column 16, lines 4-25 teach the use of communication channels. Column 16, lines 63-64 show this includes a wireless network. Wireless channels are inherently scanned in order to be detected.

processing module operably coupled to transceive datagrams to and from the Internet via the wireless network interface module; and column 17, lines 21-36; column 20, lines 10-13

memory operably coupled to the processing module, wherein the memory stores operational instructions that cause the processing module to: column 17, lines 21-36; column 20, lines 10-13

process data in accordance with a utility application to produce a message; column 17, lines 21-36; column 20, lines 43-47

process the message in accordance with a transport application to produce a packet; column 17, lines 21-36; column 20, lines 43-47

process the packet in accordance with an Internet Protocol to produce at least one of the datagram; column 17, lines 21-36; column 20, lines 43-47

generate a channel scan request in accordance with the transport application; column 17, lines 21-36; column 20, lines 43-47

determine whether one of the datagrams is being received when the channel scan request is generated; column 17, lines 21-36; column 20, lines 43-47

when the one of the datagrams is being received when the channel scan request is received, scan at least one other channel of the plurality of channels, but less than all of the plurality of channels; column 17, lines 21-36; column 20, lines 43-47

after scanning the at least one other channel, tune to the one of the plurality of channels and transmitting at least one outbound datagram; and column 17, lines 21-36; column 20, lines 43-47

scanning at least another channel of the plurality of channels. column 17, lines 21-36; column 20, lines 43-47

15. In regard to claim 15, Bendinelli disclosed:

operational instructions corresponding to an operating system of a computer, wherein the transport application is included in the operating system. Column 11, lines 1-8

16. In regard to claim 16, Bendinelli disclosed:

determining that a source of the datagram and the communication device have established a Transmission Control Protocol (TCP) connection. Column 23, lines 13-28

17. In regard to claim 20, Bendinelli disclosed:

wireless network interface module to provide connectivity to a wireless local area network (WLAN) in accordance with at least one wireless network interface protocol, wherein the WLAN is coupled to an Internet, and wherein the connectivity is provided via one of a plurality of channels of the WLAN, Column 16, lines 4-25 teach the use of communication channels. Column 16, lines 63-64 show this includes a wireless network. Wireless channels are inherently scanned in order to be detected.

processing module operably coupled to transceive datagrams to and from the Internet via the wireless network interface module; and column 17, lines 21-36; column 20, lines 10-13

memory operably coupled to the processing module, wherein the memory stores operational instructions that cause the processing module to: column 17, lines 21-36; column 20, lines 10-13

process data in accordance with a utility application to produce a message; column 17, lines 21-36; column 20, lines 10-13

process the message in accordance with a transport application to produce a packet; column 17, lines 21-36; column 20, lines 10-13

process the packet in accordance with an Internet Protocol to produce at least one of the datagram; column 17, lines 21-36; column 20, lines 43-47

when a Transmission Control Protocol (TCP) connection is established between a source and the communication device, generate a network interface protocol channel scan request; and column 17, lines 21-36; column 20, lines 43-47

when the network interface protocol channel scan request is received, hop between a channel supporting the TCP connection within the WLAN and other channels of the WLAN and transmitting on the channel supporting the TCP connection to avoid excess latency in acknowledging receipt of a datagram of the at least one datagrams or a portion of the datagram during scanning of the other channels of the WLAN. column 17, lines 21-36; column 20, lines 43-47

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. Claims 6, 13, 18, 23, 27, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bendinelli in view of Official Notice.

20. In regard to claim 6, 13, 18, 23, 27, 32, Bendinelli taught the use of a wireless network. Bendinelli failed to disclose *the network interface protocol is in accordance with at least one of IEEE 802.11a, IEEE 802.11b, and IEEE 802.11g.* The IEEE 802.11 standards listed are well known wireless protocol transmission standards in the art. It would have been obvious to one of ordinary skill in the art at the time of invention to use the above published wireless communications standards with a wireless network in order to allow communication with other wireless devices which had adopted the IEEE standards.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

22. Bhagwat et al. US 6,721,805

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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